

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>OSRAM SYLVANIA PRODUCTS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>05-CV-223</b>
	)	
<b>RICHARD ALBAUGH, PHILLIP</b>	)	
<b>SARVER, JOHN MCCOAN, BARTON</b>	)	
<b>PROTECTIVE SERVICES LLC,</b>	)	
	)	
<b>Defendants</b>	)	

MEMORANDUM OPINION

On August 9, 2005, Plaintiff Osram Sylvania Products Inc. filed a Complaint (Doc. #1) against Defendants Richard Albaugh, Phillip Sarver, John McCoan and Barton Protective Services LLC. On October 19, 2005, Defendant Barton Protective Services LLC filed a Motion to Dismiss said Complaint (Doc. # 6). On October 20, 2005, this Court ordered Plaintiff to file within twenty (20) days a "RICO Case Statement," which would be treated as an Amended Complaint (Doc. #8). On November 10, 2005, Plaintiff filed its RICO Case Statement.

Defendant Barton Protective Services LLC's motion to dismiss addresses only Plaintiff's original Complaint. Plaintiff's original Complaint has been superseded by Plaintiff's RICO Case Statement. "Since the original Complaint has been superseded [in its entirety] by the Amended Complaint, the Motion to Dismiss the original Complaint has been rendered moot. . . ."

Gonzales v. Paine, Webber, Jackson & Curtis, Inc., 493 F. Supp. 499, 501 (S.D.N.Y. 1980). See also Taylor v. Abate, 1995 WL 362488 (E.D.N.Y. June 8, 1996) (stating that a motion to dismiss is mooted upon the filing of an amended complaint where the defendants have addressed the

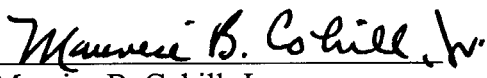
motion to the original complaint). Defendant Barton Protective Services LLC's motion to dismiss Plaintiff's original Complaint, therefore, is denied, without prejudice, as moot.

Defendant Barton Protective Services LLC is not precluded from raising any and all issues raised in its motion to dismiss Plaintiff's original Complaint in any subsequent motion. See In re Colonial Ltd. Partnership Litigation, 854 F. Supp. 64, 80 (D. Conn. 1994).

An appropriate order follows:

**ORDER**

AND NOW, this 14<sup>th</sup> day of November, 2005, it is hereby ORDERED, ADJUDGED AND DECREED that Defendant Barton Protective Services LLC's Motion to Dismiss (Doc. #6), is DENIED WITHOUT PREJUDICE as moot.

  
Maurice B. Cohill, Jr.  
Senior Judge